

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 474 OF 2010

Wednesday, this the *4th* day of *May*, 2011

CORAM:

**HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER**

Sujatha Radhakrishnan
Senior Auditor, A/c. No. 8332749
Area Accounts Office (Navy)
Perumanoor, (P.O.), Kochi -15.

.... Applicant

(By Advocate Mr. A.X. Varghese)

Versus

1. Union of India, Represented by
its Secretary, Ministry of Defence
New Delhi.
2. The Controller General of Defence Accounts
West Block-V, R.K. Puram
New Delhi.
3. The Principal Controller of Defence Accounts
(Navy), No. 1, Cooperage Road
Mumbai - 39.
4. The Senior Accounts Officer (A.N)
Area Accounts Office (Navy)
Perumanoor (P.O), Kochi - 15.
5. The Joint Controller of Defence Accounts (Navy)
Office of the Joint Controller of
Defence Accounts(Navy),
Perumanoor (P.O), Kochi - 15. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC.)

The application having been heard on 16.02.2011, the Tribunal
on *4.5.2011* delivered the following:

ORDER**HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicant has filed this Original Application seeking the following main relief:-

“ To direct the 3rd respondent to take a considered decision on Annexure A-8 representation dated 27.05.2010 of the applicant in view of the direction in Annexure A-2 judgement and also direct to keep in abeyance the transfer of the applicant till a decision is taken in Annexure A-8.

2. During the pendency of the Original Application, her A-8 representation was disposed of. Hence, she sought for amending the Original Application to include an additional prayer to quash Annexure A-10 order dated 03.12.2010 turning down her request.

3. The applicant commenced her service as Lower Division Clerk at Armed Forces Head Quarters, New Delhi in 1984. Since, she wanted to be at Kochi along with her family and her parents she had sought interdepartmental transfer to Defence Accounts Department in Kerala after her promotion as Upper Division Clerk and losing her seniority for 16 years. She joined Pay and Accounts Office (ORS) DSC Office, Kannur in August, 2000 and thereafter she got a transfer to Kochi only in the year 2006. In April 2008, she on the basis of her station seniority was picked up for transfer to Bangalore, she filed O.A. 230/2008, which was disposed of by this Tribunal in its order dated 19.12.2008. The Tribunal allowed the Original Application permitting her to continue till the end of academic year in 2009. She filed a Review Application No. 5/2009 in Original Application No. 230/2008, which

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was dismissed. She filed W.P. (c) No. 12718/2009 (S) challenging her transfer from Kochi to Bangalore. This was also dismissed. She has contended that treating entire Kerala State as one station for the purpose of transfer is to be made applicable only to the applicant in O.A. 343/1990, since such a policy has not been published in any of the Administrative and Establishment Manual of the respondents. She avers that there are other officials with longer station seniority and hence her transfer under such circumstances is vitiated by malafides. She has a minor daughter studying in the 7th Standard and her son is studying in the 4th year B.Tech. Her father is 83 years and he is suffering from Tuberculosis. Her mother is 73 years old. She has to take care of her family and hence, it is imperative for her to continue at Kochi.

4. The respondents contested the claim of the applicant on the ground that this O.A is an anticipatory application in an attempt to desist the respondents from passing any order of transfer. The service in Defence Accounts Department holds an All India Transfer liability. The general transfers are effected in accordance with the provisions in Para 368 of Office Manual, the relevant portion is produced by the applicant is as Annexure A-6. In compliance with this Tribunal's Order dated 25.01.1991 in O.A. 343/1990 entire Kerala is taken as one station for determining station seniority from 1991 onwards. The transfers of individuals serving at Popular Stations are effected generally on the basis of the seniority of stay at those stations as described in Para 370-371 of Office Manual. Station seniors are issued alert



notice well in advance with a request to intimate three choice stations for transfer.

5. The respondents also furnished the details of Station seniors serving in Kochi in compliance with this Tribunal's direction. She figures at Sl. No. 9 in the list and all her seniors with longer station seniority have been transferred out except those at Sl. No. 2, 4 & 5, who were exempted as per the transfer policy guideline. The respondents added that as per Para 375 of the Office Manual, only where an employee or a member of his family is suffering from serious ailments such as Cancer, Polio, blindness, mental disease, paralysis, etc. exemption from transfer can be permitted. Therefore, the applicant's request for retention at Kochi on medical ground did not come under Para 375 of the Office Manual. As regards the relief sought for consideration of her representation, it is stated that it has been considered and her request for retention at Kochi could not be acceded due to the reasons mentioned above. Moreover, this Tribunal as well as the Hon'ble High Court did not observe that the transfer order issued by the respondents was illegal and with malafide intention.

6. The applicant has pointed out the names of certain officials having longer station seniority than her. The respondents controverted this position stating that they belong to cadres other than Senior Auditor.



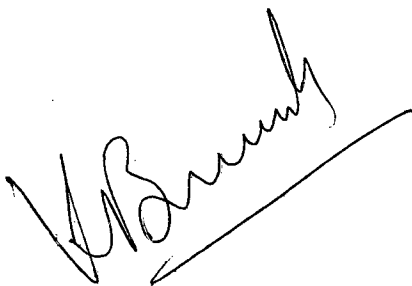
7. The applicant filed a rejoinder and an additional rejoinder. The respondents filed an additional reply statement. Both reiterated the stance they have already taken.

8. Heard the rival contentions of the learned counsels for the parties and perused the documents. In view of the facts narrated by the respondents, prima facie we do not find any violation of the transfer policy guidelines laid down in the Office Manual. They submitted that the Hon'ble Supreme Court has repeatedly held in several decisions that "transfer is an exigency of service". "It is settled law that the transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any professed norm or principle governing transfer". That Hon'ble Supreme Court in **Abani Kanta Ray v. State of Orissa (Supp.) 4 SCC 169; 1996 Lab IC 982** was held that, the scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by Supreme Court.

9. So, the scope for judicial review is very much limited in this case. However, during the argument, the learned counsel for the applicant brought to our notice that the significance of Annexure A-9 providing for grant of two years Child Care Leave till the children become major and other concessions like enhancement of maternity leave and instructions regarding posting of husband and wife together. The personal difficulties of a single parent and a daughter, who has to look after the aged parents have to be given

sympathetic consideration. He also averred that a new unit is being set up at Mulavankad and she being the junior most Senior Auditor as per the Station seniority, can have a rightful claim towards posting in this new office. Hence, the ends of justice will be met by directing the respondents to consider her merit for retention in the new unit at Kochi take an appropriate decision and intimate her about it within four weeks from the date of receipt of this order. Ordered accordingly. No costs.

(Dated, the 4th May, 2011.)



Dr. K.B. SURESH
JUDICIAL MEMBER



K. NOORJEHAN
ADMINISTRATIVE MEMBER

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